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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 5th November 1954

S.R.O. 3494.—Whereas the election of Shri Mahendra Kumar, s/o Shri Brijlal, as a member of the Legislative Assembly of the State of Vindhya Pradesh, from the Laundi constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shrimati Vidyawati, wife of Shri Babu Ram Chaturvedi, resident of Malehra, District Chattarpur;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition in view of non-observance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, NOWGONG, V.P.

ELECTION PETITION NO. 257 OF 1952

PRESENT

1. Shri S. N. Vaish, B.A. LLB Retd Distt. & Sessions Judge, U.P.,—Chairman.
2. Dr. L. N. Misra, M.A., LLB, Ph.D., Retd. District & Session Judge, U.P Member.
- 3 Shri P. Lobo, Advocate, Supreme Court, Member.

Shrimati Vidyawati Wife of Shri Babu Ram Chaturvedi, R/O Malehra, Distt. Chhatarpur—Petitioner.

Versus

1. Shri Mahendra Kumar s/o Brijlal, r/o Gandhi Bhawan, Chhatarpur (Congress). ,
2. Shri Thakur Prasad s/o Shri Gaya Prasad, r/o Mahal Ward, Chhatarpur (Jan Sangh). ,
- 3 Shri Jageshwar Prasad s/o Dharam Dutta, House No. 552, Circle No. 1, Nowgong, Distt. Chhatarpur (Socialist).
4. Shri Mata Din s/o Hallan Ram, r/o Maharajpur, District Chhatarpur (Jan Sangh).
5. Shri Babu Ram s/o Nand Kishore, r/o Garhi Malohra, Distt. Chhatarpur (K.M.P.P.)
6. Shri Ram Sahai s/o Shri Mata Din, r/o Tahanga, Tehsil Laundi, District Chhatarpur (Congress)—Respondents.

This is an election petition filed by Vidyawati calling in question the election of the Respondent No. 1 who was a Congress Candidate and who has been returned to the Legislative Assembly of V.P. from Laundi Constituency which is a single member constituency. The respondents Nos. 4 to 6 are said to have withdrawn themselves from the election within time. Only the petitioner and the Respondent Nos. 1 to 3 had gone to the polls. The petitioner prays that the election of the Respondent No. 1 as well as the election as a whole in this constituency be declared void. The grounds set forth in the petition and the list of particulars include defective ballot boxes, their tampering, coercion and intimidation, exercise of undue influence, enlisting of assistance of Government officials of all ranks, non-compliance with the rules and orders by Government servants, the improper acceptance of the nomination of the Respondent No. 1 and other corrupt practices and illegalities to which a detailed reference will be made presently under the issues.

The Respondents Nos. 2 and 5 supported the petitioner while the Respondent No. 1 alone contested the petition by filing a written statement wherein he categorically denied all the grounds for declaring the election to be void and by pressing that certain matters be not allowed to go to trial. Issues were thus struck of which Nos. 12(b), 13(a), 18, 20, 21(a), 22, 23 and 24 were first heard and disposed of in our order dated January 24, 1953. As a result of our findings on the said preliminary issues and within the limits specified therein, evidence was, however, allowed to be given on the following remaining issues which we now take up for disposal:—

ISSUES

1. Were the ballot boxes, used in the Election, defective and contrary to the mandatory provisions of law, could they be unlocked and the ballot papers taken out therefrom without their seals being broken and has this resulted in a serious non-compliance with the provisions of the Constitution and the Act and Rules made for holding Elections. If so, how is the petition affected thereby?

2. Are the allegations in para 6(b) of the petition correct? If so, what is the effect?

3. Was there any non-compliance on the part of the Presiding Officers, with the provisions of Rules 32 and 33 of the Representation of the People's Rules 1951 as alleged in clauses (c) and (d) of para. 6 of the petition.

4. Was there any non-compliance with, or breach of, the Rules 48 and 50 on the part of the Returning Officer as alleged in clause (e) of para. 6 of the petition. If so, what is the effect?

5. Were the arrangements for the safe transport of the ballot boxes and papers and for their safe custody, defective as alleged in clause (f) of para. 6 of the petition? And were the ballot boxes etc. in fact approached by various people with ample opportunity to tamper them? If so, what is the effect?

6. Were the ballot boxes tampered with and ballot papers from petitioner's boxes extracted and introduced into those of the respondent No. 1 and were fresh and unused ballot papers introduced into the boxes of the Respondent No. 1 after the closing of the poll and before the commencement of counting with the connivance of the Respondent No. 1 and his agents and supporters? If so, what is the effect?

7. Was the Respondent No. 1 doing any work of the V.P. Government in his Vindhyaachal Press at Chhatarpur at the time of his nomination and does he still own that Press? If so, what is the effect?

8. Was the Respondent No. 1 improperly accepted as a candidate?

9. Did the V. P. Government and its officials of all ranks actively participate in the elections by perpetrating the acts as alleged in clause (k) of para. 6, with the active connivance of the Respondent No. 1 and his party? If so, what is the effect?

10. Did the Congress organization commit any of the acts as alleged in clause (l) of para. 6? If so, what is the effect?

11. Did the Chief Commissioner and other high officials of V.P. commit the acts as alleged in clause (m) of para. 6? If so, what is the effect?

12(a) Is the return of election expenses filed by the Respondent No. 1 false in material particulars and has it not been filed in the prescribed manner? If so, what is the effect?

13(b) Are the allegations contained in particular No. 1 correct?

14. Are the allegations in particular No. 2 correct? If so, what is the effect?

15. Are the allegations in particular No. 3 correct? If so, what is the effect?

16. Are the allegations in particular No. 4 correct? If so, what is the effect?

17. Are the allegations in particular No. 5 correct? If so, what is the effect?

19. To what relief if any, is the petitioner entitled?

21(b) Are the allegations contained in paras. 8 to 10 of the written statements of the Respondents Nos. 2 and 5 correct? If so, what is the effect?

FINDINGS

Issues 1, 2, 5 and 6.—The material for these issues is to be found in para. 6, clauses (a), (b), (f) and (g) of the petition. Briefly put the complaint of the petitioner is that the ballot boxes were defective and that, although they were shown to be so before the polls, the election authorities did nothing to remedy the defects. It was said that the boxes could be unlocked and ballot papers removed without breaking the seals. Requests to demonstrate how the ballot box could be opened were also turned down by the Election authorities. The Returning Officer, it was alleged, went round instructing, if not ordering, the various presiding officers not to allow any such demonstration.

The petitioner enlarged this complaint by adding that there was deliberate delay on the part of the election authorities in the transit of the ballot boxes from the polling stations to the counting centre. This was done, it was alleged, with the object of tampering the ballot boxes which tampering was actually affected and ballot papers from petitioner's boxes were extracted and introduced into that of the Respondent No. 1 and in addition fresh and unused ballot papers were introduced into the Respondent's boxes.

To establish his case Mr. Khare, Counsel for the petitioner, asked the Tribunal to consider the cumulative effect of the following factors which according to him facilitated tampering of the ballot boxes and consequent removal of ballot papers.

1. Defective construction and improper sealing of ballot boxes.
2. Defects brought to the notice of the Returning Officers and Presiding Officers, who were requested to take necessary precautions by wrapping these ballot boxes with cloth or gunny.
3. Requests made before and at the time of polling.
4. Officials acting in a partism spirit.
5. Delay in transit of the ballot boxes from the polling centres to the counting centre.

Ordinarily the burden of proof lay on the petitioner, her counsel urged, but there were circumstances when the Court should dispense with this burden and draw a presumption favourable to the petitioner. It was not always possible, Mr. Khare said, to get direct or even indirect evidence, and because of the enormity of the breach of the provisions of law which resulted in a grave irregularity, if evidence was impossible to produce, a presumption should be drawn. Counsel illustrated his point by showing that in the case of a wrongful rejection of a nomination paper, the presumption quickly drawn was that this had materially effected the result of the election. This was because in such a case it was next to impossible to prove how the result had been materially affected and that in some cases of wrongful acceptance too, a few Tribunals had held that a presumption could also be drawn that the result of the election had been materially affected because no proof could be made available. Counsel had to concede, however, that many Tribunals did require strict proof, in a case of wrongful acceptance, that the result of the election had been materially affected. In other words proof was not dispensed with and a presumption favourable to the petitioner, was not drawn.

A plausible argument was then sought to be built up that just as proof had been dispensed with in the case of wrongful rejection of a nomination paper and even in some cases of wrongful acceptance then applying the same yard-stick, it was impossible to adduce factual proof, that boxes had been tampered with and their contents removed from one box into another. The court was competent to

infer, it was argued, in the wake of the five factors mentioned above, that tampering had taken place and according to the petitioner's counsel, such a presumption was warranted. The flaw in this argument is because of the unhappy analogy. In the case of wrongful acceptance almost all Tribunals have shown that proof of some kind must be forthcoming. One or two Tribunals have decided that proof is not necessary but, with due respect, it must be said that is not laying down the law correctly.

The number of the actual votes polled, for instance, are taken into consideration to see whether the result of the election has been materially affected by a wrongful acceptance. With regard to wrongful rejection it is evident that proof is really not necessary. The fact that the electorate was deprived of making its choice in favour of one legally entitled to contest the election is by itself sufficient and there is no further need of proof or presumption. A presumption of the kind sought to be drawn by petitioner's learned Counsel would be unwarranted in a case where the Respondent, as in the instant case, has defeated the petitioner by 4157 votes. A presumption of the kind that petitioner's counsel seeks to draw would imply that nearly every Presiding Officer in the Constituency was dishonest and that at nearly every polling station some foul play was practised with regard to the ballot boxes. Surely some proof about these matters could have been produced, if they existed in fact. No proof is forthcoming.

The ballot boxes used in this constituency also were the Godrej type ballot boxes which were used in this state in all the constituencies. For reasons detailed by us in our judgment dated this day in E.P. 259 of 1952, Jang Bahadur Singh Vs. Basant Lal, it is held that there has been a non-compliance with the provisions of Rule 21(1) in the frame of these boxes in as much as the dog which is the only lock for such boxes, is so thin that it passes through the space which is created between the lower disk of the knob and the lid by a slight pressure at the outer centre of the knob, releasing the knob to be rotated and allowing the box to be opened. For the same reasons it is held that, in this state, there has been a non-compliance with the provisions of Rule 21(5) of the R.P. Rules, 1951, with sealing of the boxes.

But the mere non-compliance with the provisions of the aforesaid Rule is no ground for declaring an election to be void. Under Section 100(2)(c) of the R.P. Act, 1951, it lay upon the petitioner to establish that the result of the election has been materially affected by such non-compliance and then and then alone, can an election be declared void. The petitioner has signally failed to establish either that the ballot boxes were actually tampered with or that they were ever kept unguarded at any place between the dates of the poll and the counting so as to allow any tampering.

Another factor was that all the officials were acting in a partisan spirit by helping the congress candidates. This was too wide a proposition for acceptance by the Tribunal which would have to brand every official of the state doing the duty assigned to him during the election as an offender. What seems to have escaped the attention of the petitioner when having this petition drafted was that prior to these elections, there was no Congress Ministry in this State, as existed in other states.

With regard to the last factor about delay in transit of ballot boxes from, the polling centres to the counting centre, petitioner's counsel was unable to adduce testimony with regard to the movement of the boxes, when in transit, step by step. The extracts from the General Diary of the police only showed the time of the arrival of the ballot boxes at various police stations or out-posts but no evidence was led by the petitioner to show at what time the ballot boxes were despatched from these various police stations or out-posts and so delay in transit was not proved; on the contrary there was evidence to show that the ballot boxes were at all material times under a police guard.

It was remarkable that petitioner's counsel because of the alleged defects in the ballot boxes went to the length of describing the ballot boxes as open baskets, in utter frustration. This could only be a counsel of despair. With regard to the allegation contained in para. 6(b) of the petition, the Election authorities could hardly be expected to comply with the obvious requests made at the spur of the moment for further securing the ballot boxes by the petitioner or her partymen. In the first place any suggestion if it did not find place within the rules would be a contravention if acceded to; and it was difficult, if not impossible, for any Election Officer to agree that the ballot box was defective specially when its design had been approved by the Election Commission.

Under such circumstances it is held that the result of the election has not been materially affected by any non-compliance with the Rules aforesaid.

Issues Nos. 9, 14, 15 and 16.—The allegations relating to these issues find place in paras. 6(k) and (m) of the petition and paras. 2, 3 and 4 of the list of particulars.

A whole host of officials from the then Chief Commissioner of the State down to the Zamindar of the village was accused of actively participating in the election, canvassing and committing other malpractices, exercising undue influence and coercion with the connivance of the Respondent with a view to secure the defeat of the candidate of the Kisan Majdoor Praja Party. Various illegalities and irregularities were said to have been perpetrated by the Vindhya Pradesha Government officials with the active connivance of the Congress party and its leaders in Vindhya Pradesh along with the Respondent, Mahendra Kumar. More sweeping allegations could not be made. If the object of the legislature was to preserve the purity of franchise and the purity of elections, the petitioner complained, that object was completely lost sight of in Vindhya Pradesh. Numerous witnesses were adduced to substantiate the calamity alleged above. It will serve the purpose of this decision if we examine the case of the zamindar, the lowest in the official hierarchy, for with regard to most of the other public servants, the remarks previously made will apply, *viz.* that they were only doing the duties assigned to them at the elections and that every officer on such duty could not be an offender in the eye of the election law.

Definition of a Zamindar and the duties assigned to him are to be found in the Revenue law of the old Chhattarpur State which law, parties agreed, still holds good for the whole area of this constituency except for three villages which were formerly in the old Charkhari State. This Revenue law described originally as a Kanun Lagan and Malguzari of Chhattarpur State was enacted in 1933. In its chapter X are to be found various matters dealing with the Zamindar who is said to be the first chief village officer. His remuneration, is to be found in section 3 whereas duties, punishment and suspension are to be found in the three following sections.

The question before us is whether such a person described as zamindar in the constituency is a person serving under Government and would he come within the purview of section 123(8) of the R.P. Act, 1951, if he worked as a polling agent. It was proved to the hilt that zamindar had been availed of and did work as polling agents of the Respondent (*vide* the evidence of P.W. 5 and Ex. 6); the only saving grace, perhaps, was that the petitioner also had appointed zamindars as her polling agents. That however, would not lessen the corrupt practice if one was found to have been established under section 123(8). That section and sub-section run as follows:—

Section 123—Major corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this act:—

- "(8) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any state other than the giving of vote by such person".

Now if the zamindar is the first chief village officer and his appointment and removal rest with Government, and the fact that he receives no salary but only a commission on a certain percentage basis of the collections of revenue, would he or would he not come within the prohibited class of officials described in clause (b) of section 123(8).

Attempts were made to describe the Zamindar as only a Commission agent. Assuming that this is so, it has to be admitted that this is not his only garb of office. He has other duties to fulfil as laid down in the Revenue Law and the commission agency is one of his many functions. What actually happens, is that the zamindar assist the patwari at the time of collection of rent by identifying the villagers and he deposits the rent in the Government Treasury. It was said that he need not undertake the collection of rent and yet remains a zamindar. The fact that he is listed in the Government register as a Zamindar would indicate that he is not so listed only for the purpose of receiving a Commission but is indicative of his employment by the State. There is no lingering doubt about this. It was regrettable that although the Respondent had given a list of polling agents, Ex. 21A, fully subscribed by himself, he did not readily admit in the witness box that some of these polling agents were Zamindars. With regard

to one zamindar, particularly, Nathuram by name, it was after a good deal of cross-examination that the Respondent was more or less forced to admit that he did appoint him as his polling agent.

We are quite conscious that this type of zamindar is to be found only in Vindhya Pradesh or at least in Bundelkhand alone. This Tribunal has been at pains to consider the legal status of the zamindar from every aspect and the conclusion is irresistible that he is a village officer, called in these parts by the name of zamindar and comes within the purview of Section 123(8). We realise the consequence of such a finding and that it is likely to affect several petitions before us because there too objections have been raised but, if elections have to be pure then the significance of the words in section 123(8) is that it is not only the obtaining or procuring or abetting but even the attempting to obtain any assistance, for the furtherance of the prospects of the candidates' election, that has been condemned by Parliament in no uncertain terms. It is true that the zamindar in this constituency received no pension or gratuity which every civil servant or a person serving under the Government of any state ordinarily receives and he is not liable to be transferred; but keeping all this in mind it is difficult to escape from or avoid the description in Explanation (b) of sub-section (8) that he is the first village officer and by whatever name he is called comes later; call him a headman, call him a commission agent, call him a zamindar but for all these varied and interesting appellations, he remains consistently all the while, a village officer employed in the state. That is the naked truth, the several appellations are only garbs of different offices to clothe this same village officer. The engagement by any candidate, of any person serving under the Government of any state and thus obtaining or attempting to obtain his assistance with regard to the candidate's election has been declared to be a corrupt practice. With what seriousness Parliament considered this type of Government servant can be seen from the fact that whereas State Legislature are given the authority to remove disqualifications of any Government servant, they are prohibited from doing so with regard to village officers as seen in the same section 123(8) Explanation (b).

Mr. Mehrotra counsel for the respondent strenuously argued that there was no relation of master and servant, so far as the zamindar went. This office, if any, was the result of a conferment of certain status on the part of the state. He traced the history of the zamindar from the time of the Rulers in Chhattarpur state when the Revenue Law of 1933 was enacted right down to the year when the Vindhya Pradesh State was formed in or about 1948. Mr. Mehrotra contended that whereas all Government officials were given fresh appointments under the new regime after independence, nothing of the kind was done in the case of zamindars. Apart from there being no evidence on record to substantiate the above statement of fact, Mr. Mehrotra was unable to point out, assuming that his argument was sound, as to whether the services of the zamindars were formerly terminated by the old or by the new regime, which would be necessary corollary. Indeed the new State of Vindhya Pradesh may be said to have all along been exacting work from this village officer or zamindar.

It was further contended that Mortgages were actually affected by zamindars of their zamindaris: and the recognition of certain mortgages by the State was another element of proof for the proposition that what the zamindari amounts to is really a status. The difficulty in appreciating these various side-aspects of the zamindar's position is how to eliminate the factum of service: for it is this aspect of service which seems to over shadow all other considerations, and points to the only conclusion that the zamindar is a Government servant. It may be asked what becomes of a zamindar after he is removed by the State. Is his position any better than that of any other Government servant whom the State removes from service? The zamindar must be held to be like any other Government servant. No law or rule was either shown to us which enabled the zamindar to exercise any right of transfer by way of gift, mortgage or inheritance. If there were a few such instances they would not make a law and these instances would have to be considered illegal.

The case of a Sarbarakar mentioned in the Gazette of India No. 23, dated the 22nd January 1953, Election Tribunal, Cuttack, and relied on by the Respondent's counsel can be easily distinguished. The Sarbarakar is himself liable for the Revenue, not so the zamindar and the Sarbarakar does not get his commission from the State coffers, like the zamindar. The Sarbarakari is put to auction in case it is rendered vacant by the dismissal or death of the Sarbarakar without heirs; and before Independence, the Sarbarakar was not treated as a servant or office holder under the State. This decision does not help the Respondent's case and relates more to an office of profit.

A point was sought to be made about the polling agent doing nothing as such for the furtherance of the prospects of the candidate's election and thus escape the liability, if any, under section 123(8). It is difficult to hold that a polling agent who represents a candidate should adopt a neutral attitude at the polls and be interested in only seeing that the election is free and fair. If this is his simple purpose, this ornament is really unnecessary from the candidate's point of view. Nay from this aspect he would only be a source of danger to the candidate's interest: for any wrong on his part, the candidate would be liable but any good act on his part according to this fallacious argument, would not be for his candidate's credit. This cannot be. In the election law an agent need not be created by express appointment and the agency can be inferred from fact: and if in such a case the acts of the agent can be constituted to be the acts of the candidate, much more so those of the polling agent who is specifically included in the term "agent" by section 79(a) of the R.P. Act, 1951. It has been well said that when a candidate appoints an agent, he must take "the bad with the good". It would be unjust, to ask a candidate to take only the bad and not the good. Looked at from this point of view the decisions of the other Tribunals which have held a polling agent to be a neutral factor cannot be said to lay down a sound law.

At a later stage of the arguments Mr. Misra, Advocate General of U.P. was permitted on behalf of the Respondent to advance further arguments with regard to this point about zamindars. He tried to throw some light on the question of zamindars as to what was their position before and after the formation of V.P. and as to whether he is to be reckoned a Government servant or not.

The first point taken up by Mr. Misra was as to the status of the zamindar. In addition to all that has been mentioned previously in this judgment, Mr. Misra conceded that relationship of master and servant was to be found, so far as the zamindar went. He frankly stated that certain attributes seen in a zamindar were consistent with service while there were other attributes which were not consistent with service. The elements which made up a zamindar were conflicting. The reason for this was to be found in the history of the Zamindar system as found in these parts. The zamindar owed his very existence to the Ruler who conferred a status but also extracted service. Mr. Misra felt that this system was a relic of the old feudal days. The history of zamindars both in the neighbouring States and in these parts was traced to show how zamindari was originally a conferment of status and service was, if at all, ancillary. Regarding the attributes of service, Mr. Misra stressed that, it was difficult to reconcile them simultaneously with attributes of inheritance, transfer by gift or mortgage. The latter however would negative the concept of service. Mr. Misra, had to admit that as in the case of a servant, who if removed from service, nothing remained, so also nothing remained in the case of a zamindar, if he was so removed, by the Ruler or later by the Government.

The next point advanced by Mr. Misra was as to whether the zamindar, if he was a servant, was at all a Government servant. It was necessary for the purpose of section 123(8) of the R.P. Act, 1951, that not only the zamindar but any law governing the zamindar must be recognised by the V.P. State or receive as it were a stamp from the recognising State. Mr. Misra drew our attention to the political history of these parts a few years before the formation of V.P. in 1948, in some detail. It will suffice to consider the agreement among the Rulers in Bundelkhand and Baghelkhand in March 1948 by which they drew a Covenant of the United State of Vindhya Pradesh. Later, on 26th December 1949 there was the V.P. Merger Agreement between all the States on one side and the Government of India on the other, which agreement, according to Mr. Misra, abrogated the Covenant of 1948. It was Mr. Misra's case that assuming the zamindar was recognised as a Government servant by the old Rulers, that recognition failed to be legally considered by the Government of India. In other words whatever may have been the law relating to a zamindar previously that law was certainly not recognised in the Merger Agreement nor in the Merged States Laws Act of 1949 and by no subsequent legislation. Mr. Misra said that there was a vacuum in or about the years 1948-49 so far as the recognition of a zamindar went in law. It could be said to be a law of uncertainty but the later agreement and laws had certainly failed to recognise the zamindar as a Government servant.

The flaw in this argument is a misreading of the Gazette Notification of V.P. dated the 19th September 1948 and the Merged States Laws Act of 1949. Besides the presumption is always in favour of continuance of laws rather than their discontinuance. The laws are never silent, some may not choose to hear them. It would also seem that this is the force of Article 372 and Explanation 1 of the Constitution which says that:

"the expression 'Law in force' in this article shall include a law passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it, or parts of it, may not be then in operation either at all or in particular areas".

Mr. Khare who appeared for the petitioner on the other hand contended that if a new State is born out of an old State or States all the pre-existing laws are not necessarily abrogated. If a new State is created out of a the territory of an old State then the law of the old State continues to be in force unless it is abrogated or modified by the new legislature. Whereas Mr. Misra had produced no authority for his proposition which Mr. Khare considered startling. There was considerable authority for the law as put forward on behalf of the petitioner. Mr. Khare cited A.I.R. 1953 Supreme Court 394 (400-401) which was a case from this very state of V.P. In this ruling the Supreme Court approved of the well accepted principle laid down by the Privy Council in Mayor of Lyons Vs. East India Company, 1 Moo. Ind. App. 175 at 270, 271(h) and said "In the normal course and in the absence of any attempt to introduce uniform Legislation throughout the State the pre-existing laws of the various component States would continue to be in force because on change of sovereignty over an inhabited territory the pre-existing laws continue to be in force until duly altered". There is no doubt that there should be a presumption in favour of continuance rather than a discontinuance of laws. Mr. Khare endeavoured to show, and not unsuccessfully, that the reading by Mr. Misra of the covenant, dated 18th March 1948 by the Rulers, *inter se*, was not correct. To this covenant, Government of India was not only a party, but guaranteed the working of the covenant. To the later merger agreement, dated 26th December 1949 the Government of India was itself a party on one side and the Raj Pramukh representing all the Rulers on the other side. Then followed a series of notifications in regular succession which regularise the enforcement of the old laws in V.P. For our purpose, it will suffice to mention the Notification dated 22nd January 1950 by the then Governor-General which made the State into a Chief Commissioner's Province and later came the Constitution on 26th January 1950 which brought about the formation of Vindhya Pradesh as a Part C State.

Mr. Khare was able to show further that all courts have been giving effect in actual practice to these Revenue Laws of Chhattarpur State. Recognition of any law can be either by formal enactment or by implication. There was a Notification No. 67-48, dated 30th December 1948 made on the basis of the old Chhattarpur Revenue Laws. This Notification was published in the Government Gazette of United States of V.P., dated 15th January 1949 and its legal sanction was got from Section 79 of the old Chhattarpur State Revenue Act and Section 142 of the Model Revenue Act for Bundelkhand by Seth Badri Prasad, as applied to the area formerly known as Charkahri State.

Various witnesses and even the Deputy Commissioner of Chhattarpur (R.W. 4) had said that the Revenue Law of the old Chhattarpur State was recognised and applied. There was the Ordinance 1 of 1948 published on 18th May 1948 which said that the old laws of individual States would be applicable to their respective parts.

By the Merged Laws Act, 1949, the old corresponding laws were repealed but not all the laws existing in the State.

The deeper one goes into this matter, it becomes all the more convincing that the zamindar is a Government servant and his employment by a candidate tantamounts to a corrupt practice.

Mr. Misra also contended that these issues 9 and 16 could not have gone to trial as the petition and the list did not furnish material required by Section 83 of the R.P. Act, 1951. He submitted that each corrupt practice should be so specified as to make each instance of corrupt practice identifiable. In other words it was necessary to say which particular zamindar canvassed, where and how. In the absence of these details it was not fair to the Respondent that this issue about zamindars should have gone to trial and although evidence has been recorded, on this issue, it deserves to be totally rejected. In the list of particulars it will be seen that there is a specific allegation in para. 4 about zamindars and this is sufficient notice to the Respondent about the charges he would have to meet. In its Preliminary Order this Tribunal had observed that the Petition and Particulars give sufficient data to go to trial.

It must, therefore, be held that the Respondent committed a corrupt practice under Section 123(8) by employing P.W. 5, Ram Singh of Gour, Nathuram, Amansingh, Ratiram, Ramsingh of Malka and Gajraj, all zamindars, to be his polling agents. This answers issues 9 and 16.

Regarding issues 14 and 15 they refer to happening at polling stations Dumara and Persania. At Dumara the duty of the Patwari was to demonstrate to the voters the method in which the ballot paper should be put into the ballot box but it was alleged that while demonstrating the Patwari simultaneously told the voters that they should put their ballot papers in the box bearing the symbol of two bullocks.

At Persania the polling officer, detailed to issue identity slips, drew the attention of the voters to a printed symbol adopted by the Congress and directed them to cast their votes in the boxes bearing the Congress symbol.

Apart from the petitioners evidence being unsatisfactory and unreliable with regard to the above two incidents, it was not proved what part the Respondent played in these illegal activities or if he had any hand in it at all. The allegations in Issues 14 and 15 must be held not to have been proved.

Issue No. 7.—This issue is based on clause (h) of para. 6 of the petition. Since this allegation was not very clear further details were found out by recording the statements of the learned counsel for the parties under order 10 Rule 2 C.P.C. The contention of the petitioner, in view of that statement, is that the Respondent No. 1 had an interest in a contract for the supply of printed electoral rolls to Vindhya Pradesh Government in pursuance of a contract entered into between the Vindhyaachal Press owned by the Respondent No. 1, and the Vindhya Pradesh Government, on the date of nomination of the Respondent No. 1 to the Vindhya Pradesh Assembly *viz.* 5th December 1951. It was admitted by the learned counsel for Respondent No. 1 that the Respondent No. 1 owned that press at the time of his nomination but he said that the Respondent No. 1 was not doing any work of the Vindhya Pradesh Government in that press at the time of his nomination. He made it clear that before his nomination he had printed and delivered the electoral rolls and had thus completed the work before his nomination. It has been argued on behalf of the Respondent No. 1 that the preparation of the electoral rolls was a matter under the exclusive control of the Election Commission and as such the Vindhya Pradesh Government could not be deemed to be the appropriate Government within the meaning of Section 7(d) of the R.P. Act, 1951. It was further argued on behalf of the Respondent No. 1 that Section 7 would not be applicable to Part 'C' States.

Before entering into the question of fact we would like to dispose of the question of law argued first. This point has also arisen in certain other petitions before us which we have disposed of today. We have already given detailed reasons in E.P. No. 306 of 1952, *Ganga Prasad Shashtri vs. Panna Lal and others* who, in our opinion, the disqualification for the membership of Parliament or of a State Legislative Assembly given in Chapter 3 of Part II of the R.P. Act, 1951, would be the disqualification for membership of the Legislative Assembly of Part 'C' State as well by virtue of Section 17 of the Government of Part 'C' States Act, 1951. Briefly speaking Section 17 aforesaid places a candidate for the Legislative Assembly of a Part C State on the same footing (so far as disqualifications are concerned) as a candidate for either House of Parliament. In other words if a person shall be deemed to be disqualified for being chosen as, and for being a member of either House of Parliament under any of the provisions of Article 102, he shall also be deemed to be disqualified for being chosen as, and for being, a member of the Legislative Assembly of a Part C State. A candidate for either House of Parliament is hit by the provisions of Section 7 of the R.P. Act, 1951 in view of Article 102(1)(e) of the Constitution, as section 7 R.P. Act, 1951, prescribes disqualifications for membership of Parliament etc. within the meaning of Article 102(1)(a). These provisions relating to disqualifications are of a universal nature both for membership of Parliament and a State Legislature and would also apply to a Part C State unless any different disqualifications are found to be prescribed for a candidate for the Legislature of a Part C State under the Government of Part C State Act, 1951. As already observed, under the heading "Disqualifications for Membership" (Section 17), the disqualifications for being a member of either House of Parliament have been adopted for being a member of the Legislative Assembly of a Part C State as well. Hence if a candidate for either House of Parliament is hit by the disqualifications under Section 7 of the R.P. Act, 1951 there is no reason to doubt that the candidate for the Legislative Assembly of a Part C State would also be hit by the same disqualifications. To hold otherwise would open the door for the stooges and contractors of Government and other undesirable persons, who have been debarred under Section 7 of the R.P. Act, 1951 from being chosen as, and for being members of the Legislature of a Part C State. For example Section 7 of the R.P. Act, 1951, debars a person for being chosen as, and for being, a member of either House of Parliament if having held any office

under the Government of India or the Government of any State or under the Crown in India or under the Government of an Indian State, he has whether before or after the commencement of the Constitution, been dismissed for corruption or disloyalty to the State, unless a period of five years has elapsed since his dismissal. If this disqualification prescribed under Section 7(f) would not apply to a candidate for the Legislature of a Part C State such an undesirable person shall be deemed to be qualified for being chosen as, and for being, a member of the Legislature of a Part C State. Similarly an ex-convict who has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for not less than 2 years would be eligible for membership of the Legislature of a Part C State without waiting for a lapse of five years time or without seeking the help of the Election Commission in that behalf under Section 7(b). It may be argued that Parliament while enacting the Government of Part C State Act, 1951, deliberately omitted these disqualifications as different conditions prevailed in the Indian States some of which are now grouped under Part C States. But this argument would not be tenable in view of the fact that some of the Part C States e.g. Ajmer and Delhi were always governed by the same laws as the rest of British India and the conditions there could not be different from those in other parts of British India. We need hardly emphasise that the Government of Part C States Act, 1951 brings in different provisions of the R.P. Act, 1951, under different headings, in the appropriate sections, and simply because Part II does not find place under Section 8, where there was no need to mention it, it could not be said that Part II was entirely excluded or omitted in its application to Part C States.

We, therefore, proceed to consider whether the Respondent No. 1 was disqualified from being chosen as a member of the Vindhya Pradesh Legislative Assembly because of his interest in the contract for the supply of Electoral rolls within the meaning of Section 7(d) of the R.P. Act, 1951. The contention of the learned counsel for the Respondent No. 1, as already noted above briefly, is that the printing of electoral rolls was not a contract "for the supply of goods to, or for the execution of any works or the performance of any services undertaken by the appropriate Government". In other words it is contended on his behalf that it was the Election Commission and not the Vindhya Pradesh Government that was concerned with the printing of electoral rolls in the Vindhyaachal Press. It was further argued that the document entered into between the Respondent No. 1 and the Vindhya Pradesh Government Ex. A-4 was by no means a contract. But a contract need not be in writing. The document Ex. A-4 is a letter written by the Respondent No. 1 to the effect that he would supply the electoral rolls within a certain date and get payment for it after a specific period from that date. This clearly evidences a contract of supply. The printed electoral rolls were to be supplied within a month of 22nd August 1951, but their delivery was effected in 3 instalments on 19th September 1951, 3rd October 1951 and 20th October 1951. The part payment for printing was, however, made on 22nd March 1952. The final payment was made in October 1952. The date of filing the nomination paper, as already observed, was 5th December 1951. On the date of nomination, therefore, the Respondent No. 1 had an interest in the contract for the supply of printed electoral rolls by his Press to the V.P. Government. His interest in the said contract, in our opinion, did not cease till the full payment had been received for the goods supplied. The interest in a way increased after the supply had been made as the payment had to be received. As regards the question whether the supply of goods was to the appropriate Government, we are of opinion that it was, as it was the V.P. Government who got said electoral rolls printed. There is nothing on the record to show that the Vindhya Pradesh Government had undertaken the work of printing the electoral rolls for the Election Commission or the Central Government. We cannot, therefore, assume that so far as the supply of printed electoral rolls to the Vindhya Pradesh Government was concerned the appropriate Government within the meaning of Section 7(d) of the R.P. Act was any other body. In our opinion, therefore, the Respondent No. 1 was disqualified for being chosen as a member of the Vindhya Pradesh Legislative Assembly. The issue is decided in favour of the petitioner.

Issue No. 8.—We have already held under issue No. 7 above that the Respondent No. 1 was disqualified for being chosen as a member of the V.P. Legislative Assembly and his nomination paper was, therefore, improperly accepted by the Returning Officer. The improper acceptance of the Respondent No. 1 as a candidate for the said Assembly thus materially affected the result of the election as the Respondent No. 1 secured a majority of the votes.

This issue is decided accordingly in favour of the petitioner and against the Respondent No. 1.

Issue No. 13(b).—Particular No. 1 of the list of corrupt and illegal practices directly bore upon this issue. One Bansidhar Jain was alleged to have impersonated Bansidhar Kalar at the Baundi polling station. This allegation is worthy of dismissal out of hand because of the conflicting evidence, specially regarding the time when it took place; its key note, however, is its monstrous exaggeration. A young undergraduate named Narain Das Barania P.W. 23 was produced to make believe that he actually heard the Respondent tell Bansilal (Bansidhar) Jain to go and cast a vote in the name of Bansi Taili; and this was improved upon by the next witness P.W. 24 Ramzan who made this brazen-faced statement, that he heard Bansidhar say to Mahendra Kumar the Respondent "This ticket is in the name of Bansi Taili" to which the Respondent replied "Who asks go and cast". What appears to be the case is that this Bansidhar went to record his vote but it was quickly detected, that he was not entitled to vote. However, guilty Bansidhar may have been, it is difficult to see what part Respondent took in this affair, except that he is a cast-fellow of the Respondent and certainly a far cry from procuring or inducing, the necessary ingredients to make an action penal. The petitioner has failed to prove this issue.

Issue No. 12(a).—By reason of our findings on issue No. 12(b) in our preliminary order, the petitioner has been debarred from producing evidence about the falsity of the Return of the Election Expenses.

No defect in the filing of the Return has been shown to us by the petitioner's counsel. We decide this issue against the petitioner.

1. (Sd.) SHEO NARAIN VAISH,

2. (Sd.) L. N. MISRA.

By reason of the findings of the majority of the members on issues Nos. 7, 8, 9 and 16 the election of the respondent has to be declared void.

ORDERED

The election of the respondent, Mahendra Kumar is declared void.

Mahendra Kumar respondent has committed the corrupt practice specified in Section 123(8) of the R.P. Act, 1951, by employing Ram Singh of Cour, Nathuram, Aman Singh, Ratiram, Ram Singh of Malka and Gajraj, all village officers, as his polling agents.

The petitioner shall get Rs. 200 as costs from the Respondent No. 1 who shall bear his own cost.

Dated, the 10th November, 1953.

(Sd.) SHEO NARAIN VAISH, Chairman.

(Sd.) L. N. MISRA, Member.

(Sd.) P. LOBO, Member.

DISSENTING JUDGMENT

As I have, with due respect, disagreed with my colleagues on some issues or portions of some issues I give below my reasons for the same.

Issues 1 to 5 and 6.—The petitioner's counsel made an attempt to show that the ballot boxes were defective in their manufacture and this facilitated tampering. It was clear that it was an uphill task to establish tampering by factual evidence. With regard to the defect in manufacture two so called expert witnesses, Jai Singh (P.W. 9 in E.P. 258 of 52) and Jang Bahadur Singh (P.W. 47) were examined by the petitioner and they demonstrated before the Tribunal that by some dexterous manipulation, the ballot box could be opened or unlocked without touching the paper or wax seals. Each one of them loosened the knots of the twine on the lid, and after rotating the two knobs of the lid opened the box. Jang Bahadur was able to achieve this by applying pressure to effect the rotation; while Jai Singh did so by pulling at the cord under the paper seal inside the ballot box with the help of a crochet needle. Assuming that it was possible to open the box and the construction was apparently defective it is hard for me to find that tampering factually occurred unless positive proof of one instance is at least forthcoming. Indeed Jang Bahadur, who did successfully open the ballot box without damaging any of the seals or breaking the twine did admit that if the wax seals were put quite close to the knots of the twine on the lid, then it would be impossible to open the

box like he did. Rule 21(5) of the R.P. (Conduct of Election and Election Petition) Rules 1951 says that the paper seals and other seals shall be so affixed that it will not be possible to open the box again without breaking the paper seals or other seals or any thread on which the other seals have been fixed. If fixation of seals in a certain manner can negative the demonstration shown above, that would not make the ballot box defective, much less inherently defective.

With regard to sealing there was no doubt that the boxes had been, generally speaking, properly sealed. A few seals were broken here and there but when the number of ballot boxes is seen, and the distances covered, the few broken seals cause no surprise. I am, therefore, of the opinion that there is no defect in the manufacture of the ballot box and that non-compliance with any election law or rules has not been established.

Issues Nos. 7 and 8.—Considerable controversy ranged round this issue, which had its origin in para. 6, clause (h) of the petition, which statement originally lacked in detail. Under Order 10 Rule 2 C.P.C. Counsel was permitted to supplement and this is what he stated:—

"The Respondent No. 1 has and had an interest as a proprietor in Vindhyaachal Press which was executing printing work of the Vindhya Pradesh Government before and at the time of the nomination of the Respondent No. 1 to the Legislative Assembly; and this is the only interest in clause (h) of para. 6 of the petition."

The primary question in deciding this issue is as to what is the effect of Section 8 of the Part C States Act, 1951 and that of Section 17 of the same Act. The proper appreciation of these two sections will be a guide as to whether the disqualifications for membership of a State Legislature as described in Section 7 of the R.P. Act, 1951 are applicable in Part C States. Counsel for the petitioner urged that these disqualifications were applicable. He argued that Part II of the R.P. Act, 1951, which deals with qualifications and disqualifications was not mentioned in Section 8 of the Part C States Act, 1951, for the reason that Section 8 was wholly confined, as its head note reads, to "Elections to the Legislative Assembly"; and considering the scope and framework of this Part C States Act, 1951, there was no need to mention part 2 in so many words in Section 8. He reinforced his arguments by pointing out that Section 17 of the same Act which had to be read with Article 102 of the Constitution made the position quite clear, so far as disqualifications for membership of a legislature in Part C States Act went. Article 102 gives the disqualification and attention has to be particularly reverted to clause (e) of Article 102. It is said that the R.P. Act of 1951 is a law made by Parliament and as the operation of its Part II was not specifically excluded from the Part C States Act, 1951, this Part II would wholly apply to Part C States, if not at least the chapter on disqualifications *viz.*, Chapter 3 by virtue of Section 17 and Article 102. The counsel for the petitioner claimed that this reading of the law was strengthened by the 3rd proviso in clause (3) of Section 33 of the R.P. Act, 1951, which refers to removal of disqualifications by the Election Commission. Section 33 finds place in Part V of the R.P. Act, 1951 and so it was contended that if the disqualifications mentioned in part 2 were not to be applied to Part C States, there would be a suitable amendment of Section 33 or at least some mention in the Representation of the People (Application to Part C States) Order, 1951, to that effect.

Mr. Mehrotra, counsel for the respondent, on the other hand was quite emphatic that the disqualifications pertaining to membership of the legislature for Part A States did not apply at all to the legislature of the Part C States. His primary objection was that it would be doing a violence to the interpretation of statutes if the omission of part 2 in Section 8 of the Part C States was considered, as the petitioner sought to do. He maintained that it was not competent to go round an omission or exception of the law and overcome it by implication. The omission of part 2 in section 8 was statutory. If there was any doubt about the omission then it might have necessitated an enquiry into the scope and framework of the Act. Even in accordance with Article 102(e), he contended that Part C States Act, 1951 is a law made by Parliament and it is certainly a later law than the R.P.A. of 1951 and to quote Lord Tenterden in (1831) 2B and Ad 818(821), *Rex Vs. Justice of Middlesex* "it speaks the last intention of the makers". In this regard counsel pointed out that part 2 of the R.P. Act (1951) is a non-existent law so far as Part C States Act, 1951, goes, and is not a law made by Parliament for Part C States.

There is another aspect of looking at this matter. Article 240 of the Constitution authorises Parliament to create legislatures and other bodies in Part C

States and also law for their governance. Clause 2 of Article 240 reads as follows.—

'Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purpose of Article 368 notwithstanding that it contains any provision which amends, or has the effect of amending the Constitution"

In the light of this sub-clause 2 it is clear that if Section 8 and Section 17 of Part C States Act contain any provision which amend or has the effect of amending Article 102(e), Parliament has been given the right to do so. To elaborate this point, it virtually means that so far as Part C States go Article 102(e) is a dead letter for the present. This is so because Parliament has really not yet brought the whole of Part C States Act, 1951, into operation and when that time comes, due attention will be paid as to whether to include part 2 in section 8 or not. At present it is definitely not there and so it must be held that Chapter 3, relating to disqualifications in the R.P. Act, 1951 does not apply to Part C States. It is pertinently pointed out that this may lead to some undesirable persons like ex-convicts being free to enter the legislature. If this is the unfortunate effect that would not warrant a mis-reading of the laws. It may be that because of very unsettled and uncertain conditions prevailing in the old Indian States, which now comprise the Part C States that Parliament has stayed for the present the application of the R.P. Act, 1951, in its entirety. 'Where' says Maxwell in his Interpretation of Statutes at page 4 9th Ed "by the use of clear and unequivocal language capable of only one meaning anything is enacted by the Legislature it must be enforced even though it be absurd or mischievous" and again at page 14 'it is but a corollary to the general rule in question that nothing is to be added or to be taken from a Statute unless there are similar adequate grounds to justify the inference that the Legislature intended something which it omitted to express". Regarding the difficulty presented by Section 33 that section would only come for consideration if it was applicable. When it is not applicable then Section 7 and Section 33 disappear. At a later stage of the argument Mr. Misra Advocate General of U.P. whom the Tribunal permitted to add to what had been already said threw more light on this issue. So far as Part C States went he said, that provision for them was to be found in Part VIII of the Constitution and so far as Article 102 went it wholly applied to Part C States by virtue of Section 17 of the Government of Part C States Act. Care should, however, be taken in construing clause (e) of Article 102 which would make the Article read as follows —

"A person shall be disqualified for being chosen as and for being a member of either House of Parliament if he is so disqualified by or under any law made by Parliament"

For Part C States the law made by Parliament is the Government of Part C States Act, 1951 and no other law not even Representation of People's Act, 1951 except to the extent it has been brought in by virtue of Section 8 of the Government of Part C States Act 1951.

In the view taken above, that disqualifications as prescribed in Section 7 of the R.P. Act do not apply to the membership of the Legislature in Part C States, further discussion of the alleged disqualification is unnecessary. I, therefore, decide these issues against the petitioner as she has failed to substantiate her allegation in law.

Issue No 11—Although the Chief Commissioner and other high officials have not been shown to have acted in any partisan spirit whatever, I do want to place on record a statement by Shri K. C. Tewari, Returning Officer, in this constituency when asked a question by the Tribunal as to what was the attitude of the officials during the elections. He made this astonishing statement that the attitude varied with each individual officer. To quote his own words this is what he said "If any particular officer has any grievance against the party in power his sympathies will naturally be against the party in power. If any Government servant has got no grievance against the party in power he may be neutral or may be sympathising with the party in power. In case the other party is such which an individual considers better for the country then also he may not be sympathising with the party in power". This answer was indeed unfortunate and cannot be condemned too strongly. The pattern of elections adopted in our country necessitates a strictly neutral attitude on the part of the official machinery. Neutrality has been imposed

on Government servants with a definite object. It has been imposed for a fair representation of the area over which their power extended. With this remark I too decide this issue against the petitioner as she has failed to substantiate it in any manner.

(Sd.) P. Lobo, Member.

The 10th November, 1953.

ANNEXURE

IN THE COURT OF THE ELECTION TRIBUNAL AT NOWGONG, V.P.

PRESENT:—

1. Shri S. N. Vaish, Chairman.
2. Dr. L. N. Mishra, M.A., LL.B., Ph.D.,
3. Shri P. Lobo Advocate, Supreme Court—Members.

ELECTION PETITION No. 257 of 1952

Smt. Vidyawati, wife of Shri Babu Ram Chaturvedi, r/o Garhi Malehra, District Chhatarpur—Petitioner.

Vs.

1. Shri Mahendra Kumar, s/o Brij Lal, r/o Gandhi Bhawan, Chhatarpur,
2. Shri Thakur Parsad, s/o Shri Gaya Parsad, r/o Mahal Ward, Chhatarpur,
3. Shri Jageshwarparsad, s/o Dharam Dutt, House No. 552, Circle No. 1, Nowgong, District Chhatarpur,
4. Shri Matadin, s/o Shri Hallan Ram, r/o Maharajpur, District Chhatarpur,
5. Shri Babu Ram s/o Shri Nand Kishore, r/o Garhi Malehra, District Chhatarpur,
6. Shri Ram Sahai, s/o Shri Matadin, r/o Tahanga, Tahsil Loundi, District Chhatarpur—Respondents.

ORDER

This is a petition under section 81 of the Representation of the People's Act, 1951 filed by the petitioner above named calling in question the Election of Mahendra Kumar Respondent No. 1 to the Vindhya Pradesh Legislative Assembly from the Loundi single Member constituency. The Respondents Nos. 4 to 6 are alleged to have withdrawn themselves from the Election. It is further alleged that the petitioner and the Respondents Nos. 1 to 3 had gone to the polls and the Respondent No. 1 was declared elected on 4th February, 1952, only the Respondents Nos. 1, 2 and 5 have filed their written statements. The respondents 2 and 5 support to the petitioner and Respondent No. 1 is the only contesting respondent.

The Election has been challenged on various grounds consisting of corrupt and illegal practices, defective Ballot Boxes, tampering with them, undue influence and the disqualification of the Respondent No. 1 from being chosen as a member of the V.P. Legislative Assembly, as set forth in greater details in the petition.

The Respondent No. 1 has denied all the allegations of the petitioner and has further attacked the petition in alleging that it is not maintainable on account of non-compliance with the provisions of the Representation of the People's Act, 1951. The pleadings of the parties gave rise to several issues out of which the following are the preliminary issues first taken up for the disposal:—

1.(12)(b).—Should the petitioner be debarred from producing evidence about the return being false by reason of his failure to give full particulars as required by section 83(2) of the Representation of the People's Act, 1951?

2.(13)(a).—Do the allegations in particular No. 1 amount to an illegal and corrupt practice? If not, what is the effect?

3.(18).—Have the petition and the particular, appended thereto not been properly verified? If so, what is the effect?

4.(20).—Should the petitioner be called upon to furnish additional security under section 118 of the Representation of the People's Act, 1951?

5.(21)(a).—Can the Respondents Nos. 2 and 5 support the petition on the ground of any illegality or irregularity not alleged by the petitioner herself?

6.(22).—Whether the charges mentioned in Nos. 2 to 5 of the list of particulars are not possessed of such essential details as comply with the requirements of section 83(2) of the Representation of the People's Act, 1951, and is the petitioner not entitled to prove them?

7.(23).—Whether the allegations embodied in clauses (k)(m) and (l) of para. 6 are so vague and general that they do not comply with section 83(1) and 83(2) of the Representation of the People's Act and is petitioner not entitled to prove them?

8.(24).—Does the association of the two reliefs prayed for in the petition render the petition unmaintainable in Law?

FINDINGS

12(b).—The petitioner's allegations on the point is contained in clause (n) of para. 6 of the petition which reads as follows:—

"Because the return of the election expenses filed by the Respondent No. 1 is false in material particulars and has not been filed in the manner prescribed."

The Respondent No. 1 contends that this allegation is vague and general and that the petition has not given, in the list appended to the petition, any particulars of the items in the return on the basis of which he has made this charge against the respondent. The term "corrupt practice" has been defined in section 2-C of the R.P. Act of 1951 as follows:—

"Corrupt practice means any of the practices specified in section 123 or section 124."

Section 124(4) constitutes the making of any return of election expenses which is false in any material particulars *a corrupt practice*.

Section 83(2) provides that the petition shall be accompanied by a list setting forth full particulars of any corrupt practice which the petitioner alleges. It is thus obvious that the petitioner was bound to give, in the list full particulars of the said corrupt practice alleged by him and thus, so far as the commission of this alleged corrupt practice is concerned, the Tribunal is of the opinion that the petitioner cannot be allowed to produce evidence about the return being false in material particulars.

13.(a).—The material portion of particular No. 1 is as follows:—

"That at polling station Loundi on 25th January, 1952, one Shri Banshidhar, by caste Jain, uncle of Respondent No. 1 with the connivance of Respondent No. 1 and his agent applied for the ballot paper for purposes of voting in the constituency and obtained the ballot paper and was going to cast his vote when the petitioner's agent pointed out that he was an imposter."

The Respondent's Learned counsel contended that this allegation does not fall within the ambit of section 123(3) of the R.P. Act 1951 inasmuch as the petitioner does not alleges the procuring or abetting or attempting to procure by a candidate or his agent his application by a person for a ballot paper in the name of any other person. But the word "connivance" which finds place in the particular No. 1 quoted above has been defined in Websters New International Dictionary as:—

"Corrupt or guilty assent to wrong doing, not involving actual particulars in it but knowledge of, and failure to prevent or oppose him."

Such being the meaning of the connivance it cannot be said that the petitioner has not alleged any action by the Respondent No. 1 and his agent in the application by Banshidhar and in the opinion of this Tribunal the contention of the learned counsel had not force.

Another eminent Counsel for this respondent contended before the Tribunal that the petitioner, in his petition, has made any allegation of a false return as such and section 83(2) requires particulars only of a corrupt practice which the petitioner alleges and for this reason these particulars should not be allowed to go to trial. The petitioner's learned counsel contends that this particular relates to the allegations contained in para 6(l) of the petition which reads as follows:—

"Because the election of the returned candidates has been procured by illegal and corrupt practice."

The Respondent's learned counsel mentions that this clause (j) does not fulfil the requirements of section 83(1) of the R P Act 1951 inasmuch as no concise statement of the material facts is embodied in the petition. The Tribunal has heard the learned counsel for both the parties at some length on this point. The Tribunal is of the opinion that the petition and the list have to be read as a whole and it would be difficult to lay down any particular standard of requirements for the contents of the petition as urged by the respondent's counsel. It would thus be permissive for the petitioner to lead evidence about the particular No 1, and the Tribunal does not agree with the contention of the learned counsel for the respondent.

18—Regarding this issue, it was contended for the Respondent No 1 that the verification about the contents of para 6(a) to 6(q) of the petition and the verification of the contents of the paras 4 and 5 of the list are defective inasmuch as the petitioner has mentioned they are partly based on her personal knowledge and partly on information received which she believed to be true. Section 83(1) and (2) of the R P Act 1951 provides that the petition and the list shall be verified in the manner laid down in the Code of Civil Procedure 1908 for the verification of pleadings. Order 6 rule 15 (2) of the C.P.C. provides as follows—

‘The person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verified of his own knowledge and what he verifies upon information received and believed to be true’

The petitioner has verified, by reference to the numbered paragraphs, both of the petition and of the list and has thus complied with the provisions of the C.P.C. if, the petition and the list contained certain paragraphs which contain several sentences the contents of some of which are based on petitioner's personal knowledge and others on information received and, under the circumstances, the petitioner has mentioned that such paragraphs are partly based on personal knowledge and partly on information received which she believes to be true, the petitioner in the opinion of the Tribunal has amply complied with the provisions of the C.P.C. in respect of the list of particulars have been properly verified.

Issue 20—This issue has not been seriously pressed by the Respondent's learned counsel and therefore the Tribunal does not consider it proper to call upon the petitioner to furnish any additional security.

Issue 21(a)—The respondents 2 and 5 in the written statements, not only support the petition but also alleges certain illegalities and irregularities on the part of the returned candidate which have not been alleged by the petitioner herself. The Petitioner's learned counsel relies on order 8 rule 2 C.P.C. and contends that a respondent who has been called upon to file a written statement can take all the pleas which are in his knowledge and which can be taken by a defendant in a suit. But the Election Law is special Law and under section 80 of the R.P. Act 1951, an Election can be challenged by the presentation of a petition within the prescribed period. The act does not contemplate the challenging of an Election by means of a written statement by a respondent after the expiry of the prescribed period. The analogy of the C.P.C. cannot therefore be imported into the Election Law and the petitioner cannot be allowed to raise new grounds of attack through one of the respondents by means of a written statement especially when the petitioner herself cannot do so by amending her petition with the introduction of fresh allegations. The Tribunal therefore, finds that the Respondents Nos 2 and 5 cannot support the petition on the grounds of illegality or irregularity not alleged by the petitioner herself. One of us has disagreed with this view of the majority of the Tribunal and his dissenting views of this are appended.

Issue No. 22—We have heard the learned counsel for the parties at some length. It is difficult to lay down any suitable measures as to what essential details comply with the requirements of section 83(2) and the Tribunal is of the opinion that the charges mentioned in numbers 2 to 5 of the list of particulars contain sufficient details to go to evidence.

Issue No. 23—After a careful consideration of the contents of the petition and the particulars the Tribunal is of the opinion that there is sufficient compliance with the provisions of section 83(1) and (2) of the R.P. Act, 1951. So far as these clauses are concerned, it was contended by the learned counsel for the respondent that at least other mal-practices mentioned in para 6(k) of the petition should not go to evidence. The Petitioner's counsel, on the other hand pointed out that all these aforesaid clauses referred to are allegation of a general nature and evidence could be led to prove them. The Tribunal holds that the contention of the petitioner is correct.

Issue 24.—Section of the R.P. Act provides that—

"A petitioner may claim any one of the following declarations "....."

The learned counsel for the respondent urges that as the petitioner has claimed both the reliefs (a) and (c) the pertinent section has been contravened and the petition should therefore be dismissed. We find that the directions in this section are permissive and not mandatory. The mere fact that the petitioner has prayed for the two reliefs cannot entail dismissal of the petition and the Tribunal therefore decides this issue in the negative.

1. (Sd.) SHEO NARAIN VAISH, *Chairman.*

2. (Sd.) L. N. MISRA, *Member.*

3. (Sd.) P. LOBO, *Member.*

The 24th January, 1953.

SHRI P. LOBO

Issue No. 21.—I have seen the majority judgment with regard to this Issue and with great respect differ from it. It is difficult to understand what is the point in notifying all other duly nominated candidates to an Election Petition if they are to be joined as "dummy" respondents. If they are free to support, they are also free to oppose the returned candidate. Their only function cannot be to bring up the rear in support, they are also free to oppose the return of the returned candidate. What if such a respondent, who is not a returned candidate, does not belong to the political party of the returned candidate? True, the Legislative has set up a machinery with regard to any complaint that may be put up concerning an Election; but it is just likely that such a duly nominated candidate as we are considering, has not been able to file a Petition for want of finance etc. and is possessed with the knowledge of some illegality or irregularity which the Petitioner may have been ignorant of in the circumstances, I consider it would be in the interests of justice to let a duly nominated candidate bring to the notice of the Tribunal in his written statement, which he has been called upon to file, any illegality or irregularity to which he can over.

It is argued that it may happen that a Petitioner may fail on his own Petition and yet his desired result, of declaring the election, of the returned candidate or the whole election void, be achieved by virtue of a written statement filed by a respondent who is not the returned candidate. It is further urged that this would side track the period of limitation for filing Petitions as provided for in the R.P. Act and Rules of 1951 nay it is contended, that such a written statement, may virtually have the effect of an amendment of the petition. Considering all these aspects, I still fail to see why a rescant illegality or irregularity as framed in this issue should not fully see the light of day and its wrong doers go unpunished. I therefore hold that there is no bar for a respondent who is not a returned candidate to bring to the notice of the Tribunal, and incidentally perhaps support the Petition any illegality or irregularity not alleged by the Petitioner.

It was said in Bombay City (MU) 1924 case published at page 173 of the Hammond's Indian Election Cases 1936 in Annexure C at page 181 that the reason for joining other candidates as respondents was to give them an opportunity to raise recriminations to show that the Petitioner is not entitled to the declaration which he claims. This observation it must be respectfully pointed out, does not meet the above discussion.

The Legislature may later define or limit the scope of the representation to be made by such respondents, who are not returned candidates, in their respective written statements but the Law as it stands at present places no bar on such respondents, at least to this limited extent, of pleading before the Tribunal any illegality or irregularity committed at the Election.

(Sd.) P. LOBO.

NOWGONG, V.P.

The 24th January, 1953

[No. 19/257/52-Elcc.III/17983.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.

